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Paper No. 6

In re Application of :
Robert H. Cheyne, III : DECISION ON PETITION
Application No. 09/972,623 :
Filed: October 6, 2001 :
Attorney Docket No. 101AC-021B :

This is a decision on the petition to make this application special for advanced examination out of turn that was filed on July 23, 2003. The \$130.00 petition fee has been paid.

The petition is dismissed.

Petitioner has requested special status on the grounds of actual infringement of the claimed invention. A review of the petition shows that petitioner has not satisfied all of the requirements for a petition to make special on the grounds alleged as those requirements appear in MPEP § 708.02(II). Specifically, for the reasons that follow, it does not appear that petitioner has made "a rigid comparison of the alleged infringing device with the claims of this application", so as to be able to base on opinion thereon stating that the claims are "unquestionably" infringed.

Petitioner relies upon a telephone call placed to a business entity. That business entity is a supplier of a product sold under a registered trademark, which product is an "antimicrobial treatment that protects the binding agent" used in a certain product. Someone at the supplier told petitioner that the antimicrobial agent is supplied to the supplier's customer for use in scouring pad applications, and that in the opinion of this person, there is but one method by which the antimicrobial agent could be applied to the scouring pad. This person expressed a conclusory opinion that this method was necessarily the method that had to be followed by the supplier's customer.

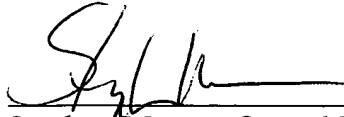
Independent claim 1 of this application requires "a cured polymeric coating" on a substrate, which polymeric coating includes an antimicrobial agent when the coating is cured on the substrate. Sole independent method claim 10 requires, *inter alia*, the step of "providing a liquid, film-formable binder" to coat the surface of a substrate, coating the substrate with the liquid, and then curing the binder and repeating the coating and curing as desired.

It is clear that it is any conclusion that these claims are infringed by the activities of the supplier is speculative, at best. For example, it is far from clear that the antimicrobial agent supplied is incorporated in a polymeric coating, let alone that the coating is repeatedly applied with multiple curing steps. In short, petitioner's comparison of the claims with the alleged infringing device is not a rigid comparison, but is a speculative comparison based upon second hand information which in fact does not specifically address limitations present in the two independent claims of record. Accordingly, there is presently no basis upon which to grant special status.

Petitioner may file a renewed petition directed to this matter, provided that the renewed petition is filed within two months of the date of this decision, as required by 37 CFR 1.181(f). No fee is required for the renewed petition. The application is being returned to storage in the

Technology Center 3700 Central Files awaiting first action on the merits.

PETITION DISMISSED.

A handwritten signature in dark ink, appearing to read 'S. Marcus', is written over a horizontal line.

Stephen Marcus, Special Program Examiner
Patent Examining Groups 3710 and 3720

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